

Exhibit D

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION

DYLAN BRANDT, et al.,

Plaintiffs,

v.

No. 4:21CV00450 JM

November 28, 2022
Little Rock, Arkansas
8:57 AM

LESLIE RUTLEDGE, et al.,

Defendants.

TRANSCRIPT OF BENCH TRIAL - VOLUME 5
BEFORE THE HONORABLE JAMES M. MOODY, JR.,
UNITED STATES DISTRICT JUDGE

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Appearances continuing...

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22
23 *Proceedings reported by machine stenography. Transcript*
24 *prepared utilizing computer-aided transcription.*
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INDEX - VOLUME 5 (11/28/22)**WITNESSES FOR THE DEFENDANTS: Direct Cross Redirect Recross**

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1 (Proceedings continuing in open court at 8:57 AM.)

2 THE COURT: Are y'all ready?

3 MR. JACOBS: Your Honor, Defendants are ready to
4 call, I guess, our next witness, not our first witness. One
5 thing I wanted to check in on. So Dr. Regnerus is prepared to
6 testify remotely tomorrow, and I wanted to ask at what time the
7 Court could begin tomorrow with the hope that it could begin I
8 guess as early as we can make it happen. Because Dr. Regnerus
9 is testifying late in the evening from where he's located, so
10 just to avoid him having to run into testifying in the wee
11 hours of the early morning, if we could start as early as we
12 can. I recognize that --

13 THE COURT: I expect this will likely make everybody
14 cringe, but courthouse opens at 7:30.

15 MR. JACOBS: Could we -- I think he'd be available
16 to start at like 8:00.

17 THE COURT: That's fine. That would give everybody
18 time to get in the building and get settled and we could make
19 sure stuff is up.

20 MR. JACOBS: Okay. That's all the preliminary
21 matters that we have.

22 THE COURT: So with an asterisk, you've got my
23 entire week. What are your thoughts on how long you're going
24 to take?

25 MR. JACOBS: Our witnesses will be done Thursday and

1 we'll rest on Thursday.

2 THE COURT: I've got two sentencings, one at 1:00
3 and one at 2:00 on Wednesday. Those usually last 30 minutes,
4 so we're probably going to work a little later into lunch on
5 Wednesday.

6 MR. JACOBS: That won't be a problem, Your Honor.

7 THE COURT: And then it looks like I've got a lunch
8 hearing on the 1st. Okay. That's what is on my schedule other
9 than you guys. So are we ready to jump back in?

10 MR. JACOBS: We're ready, Your Honor. Defendants
11 will call Dr. Stephen Levine.

12 THE COURT: Sir, if you could come on the far side
13 of that silver rail. Good morning.

14 **STEPHEN LEVINE, DEFENDANTS' WITNESS, DULY SWORN**

15 **DIRECT EXAMINATION**

16 BY MR. CANTRELL:

17 Q Good morning, Dr. Levine.

18 A Good morning.

19 Q Can you state your name and spell it for the record.

20 A Stephen, S-t-e-p-h-e-n, Barrett, B-a-r-r-e-t-t, Levine,
21 L-e-v-i-n-e.

22 Q Thank you. Dr. Levine, can you tell us what academic and
23 clinical positions that you currently hold?

24 A I am clinical professor of psychiatry at Case Western
25 Reserve University. I'm a staff psychiatrist in a group

1 Q. And switching back to adults, you've written letters
2 of authorization for adults seeking gender-affirming
3 surgeries. Is that correct?

4 A. I have.

5 Q. And you've done that as recently as the past two
6 years.

7 A. I have.

8 Q. And you've also written letters authorizing hormone
9 therapy for adult patients with gender dysphoria.

10 A. I have.

11 Q. And these are letters they can take to the
12 endocrinologist. Is that right?

13 A. Yes.

14 Q. And you have written such letters approving hormone
15 therapy for minors under 18 in a few cases within the past
16 five years, haven't you?

17 A. I don't think in the past five years.

18 Q. Okay. Can we turn to Dr. Levine's deposition, page
19 78?

20 I would like you to read along with me starting on
21 line 3. So between you and Mrs. Novak, there have been a
22 handful of cases in the past, say, five years where you
23 have approved hormone therapy for minor. Is that right?

24 These are particularly fraught difficult
25 circumstances, yes.

1 A. Yes.

2 Q. Mrs. Novak is someone who works in your medical
3 practice -- or your psychiatry practice?

4 A. She's a younger colleague of mine.

5 Q. That was your testimony.

6 A. I'm sorry?

7 Q. That was your testimony that I read correctly.

8 A. Yes. I'm just not sure today whether it's five years
9 or six years now. And in general, there have been a few
10 very fraught cases where we felt that this is a very
11 reasonable thing given the severity, the complexity of the
12 case, and that we would -- we, along with parents, would
13 hold our breath that this would be of help.

14 Q. And you have cosigned letters for hormone therapy for
15 minors written by Mrs. Novak, again, approving some minors
16 for hormone therapy. Is that right?

17 A. Yes, but this has not occurred very recently, Ms.
18 Cooper.

19 Q. You would not write a letter supporting hormone
20 therapy for a minor if you did not believe the patient had
21 gender dysphoria, correct?

22 A. Correct.

23 Q. And you would not write a letter approving a minor
24 for hormone therapy without first determining that they
25 had a longstanding, stable gender identity. Is that

1 much more cautious. We will give adolescents hormones,
2 but not as quickly as the Standards of Care would like.

3 That was your testimony in Keohane.

4 A. I have to say yes.

5 Q. And just to clarify, the Standards of Care you're
6 referring to in the 7th Edition, is that the WPATH's
7 Standards of Care 7th Edition?

8 A. Yes.

9 Q. When you were deposed in May of this year in this
10 case, the Brandt case, you testified, did you not, that
11 going forward you have not made a decision to no longer
12 write letters approving hormone therapy for patients under
13 18 years of age.

14 A. Indulge me a minute. In the previous thing you put
15 up, my deposition of adolescents was not the definition I
16 gave to the Judge earlier this morning. It was my
17 definition of an adolescent is somebody 19 years of age.
18 And so if you reread that, it would include 18-year-olds
19 and 19-year-olds.

20 So would you repeat the last question you asked me?

21 Q. Sure. When you were deposed this past May in this
22 case in Arkansas, you testified that, going forward, you
23 have not made a decision to categorically not write
24 letters approving hormone therapy for patients under 18,
25 correct?

1 A. I don't remember saying that, but if you have that, I
2 trust you.

3 Q. Yeah. I think we want to put that in the record.

4 Can we look at deposition page 227?

5 And if you go to line 3, part way through beginning
6 with the words, "Have you made a decision." Are you with
7 me? It's highlight.

8 Have you made a decision to no longer consider
9 hormone therapy for anybody who has not reached their 18th
10 birthday since you provided those letters?

11 Answer: I've made a decision to be very cautious and
12 to put a period of time in therapy between me and the
13 letter.

14 You go on to say more, which you're welcome to read
15 if you would like, but I want to continue on to another
16 passage that picks up rather than taking the Court's time
17 reading a lot of discussion in between.

18 If we could turn to page 228, line 3. Let me know if
19 you want to review there.

20 MR. CANTRELL: Your Honor, I would like to just,
21 if we could, take a look at the intervening testimony,
22 glance at that.

23 MS. COOPER: Sure. We can post that.
24 Absolutely.

25 THE COURT: I thought you were in the

1 deposition, Mr. Cantrell, but go ahead.

2 BY MS. COOPER:

3 Q. Do you have that in front of you now, Doctor? If you
4 look at line 3 and read along with me.

5 So I'm not sure if that answers my question. Have
6 you made a decision to no longer provide letters?

7 Answer: Oh, I'm sorry. No, I haven't made that
8 decision.

9 Question: So would it be a case-by-case basis if
10 there were a patient that you felt it was appropriate for
11 you -- appropriate for, you would consider doing it, say,
12 a 17-year-old or a 16-year-old?

13 Mr. Cantrell: Object to form.

14 Answer: I don't have a -- yes. The answer to your
15 question is yes.

16 I'm not going to ask you if that was your testimony
17 again --

18 A. Thank you.

19 Q. -- since I see how you love those questions.

20 Now, today you testified that you would not recommend
21 hormone therapy for patients under 18. Do you mean you
22 would not generally recommend hormone therapy as a general
23 matter?

24 A. Yes.

25 Q. So there may be exceptional cases where you would

1 still consider it appropriate.

2 A. Yes. These are very fraught circumstances. I think
3 all of us all over the world recognize that we are under
4 very difficult circumstances sometimes. We don't know
5 what to do and we eventually go along with the patient's
6 sincere desire to try hormones.

7 Q. Now, you talked on direct about an article you wrote
8 called, *Reconsidering Informed Consent for*
9 *Trans-identified Children, Adolescents, and Young Adults*.

10 And I just want to ask you a couple of questions
11 about that article.

12 In this article, you recommend informed content
13 process that you think providers should undertake before
14 authorizing medical or surgical transition for minors,
15 correct?

16 A. Yes.

17 Q. I'd like to pull up a passage from that article to
18 show you. If we can look at page 2. And I have some
19 material highlighted. Actually, I would like you to skip
20 to -- sorry. I wasn't in front of the mic. I would like
21 to skip to the second highlighted paragraph.

22 A. I know what you're you talking about.

23 Q. We over highlighted. If you'll read along with me in
24 the second paragraph there.

25 Social transition, hormonal interventions, and

1 MS. TEMPLIN: Apologies.

2 MR. JACOBS: That's what we would suggest. Dr.
3 Lappert is willing to change around his travel to make that
4 work. I think we went a little bit longer with Dr. Levine than
5 we anticipated. We hoped to be able to do both today. So long
6 as the Court has tomorrow afternoon available, so long as
7 there's not any objections on that end, I think we could switch
8 those and get everything done.

9 THE COURT: The only thing I have in my week that's in
10 y'all's way is the one o'clock 30 minute and the two o'clock 30
11 minute on Wednesday, then the noon hour on Thursday.

12 MR. JACOBS: Neither of those will be problems on our
13 end, Your Honor. If that's acceptable to everybody, I think we
14 will proceed with Dr. Regnerus tomorrow when we get everything
15 set and then proceed with Dr. Lappert.

16 THE COURT: If we get both of them done tomorrow, how
17 late do you anticipate going on Thursday?

18 MR. JACOBS: On Thursday, Your Honor, it could be a
19 full day on Thursday. I just don't know whether it's going to
20 be sort of an early day out on Thursday or not at this point.

21 THE COURT: I'm just curious.

22 MR. JACOBS: Regardless of this, we'll still be
23 totally done on Thursday with our witnesses. That won't impact
24 this at all.

25 THE COURT: All right. Court is in recess until

1 eight o'clock tomorrow.

2 MR. JACOBS: Yes, Your Honor.

3 (Overnight recess at 4:19 p.m.)

4 REPORTER'S CERTIFICATE

5 I certify that the foregoing is a correct transcript from
6 the record of proceedings in the above-entitled matter.

7 /s/Elaine Hinson, RMR, CRR, CCR
8 United States Court Reporter

Date: December 4, 2022.

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